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10/559,091

05/08/2006

Frank L Greenway

Greenway 02P01US

1228

25547

7590

12/08/2008

PATENT DEPARTMENT

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EXAMINER

WINSTON, RANDALL O

ART UNIT

PAPER NUMBER

1655

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/559,091 | <b>Applicant(s)</b><br>GREENWAY ET AL. |  |
|                              | <b>Examiner</b><br>Randall Winston   | <b>Art Unit</b><br>1655                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 73-135, 139 and 140 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 73-135, 139 and 140 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election with traverse on 08/12/2008 of Group III, claims 73-76 and 105-107 is acknowledged. Examiner also acknowledges that non-elected claims 1-72 have been cancelled.

It is noted at the outset that Applicant did not elect from among the species set forth in the previous Restriction/Election requirement in the response filed 08/12/2008 (which was required - see previous Office action). However, upon further review, another restriction requirement and election of species requirement for original claims 73-135 and new claims 139-140 is deemed necessary at this time - as set forth below:

1      Restriction to one of the following inventions is required under 35 U.S.C. 121 and 372:

This application contains the following inventions or groups of inventions which are not so linked as to form a single inventive concept under PCT 13.1:

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I.      Claims 73-76 and 139, drawn to a first product: an anti-angiogenic composition wherein said composition is or is substantially similar to, a composition that elutes from an aqueous extract from pomegranate fruit.

Group II. Claims 77-104, drawn to a first method of use: a method of ameliorating or prevent angiogenesis and/or decreasing the size of an existing capillary network in a mammal comprising administering an effective amount of claims 73.

Group III. Claims 105-107 and 140, drawn to a second product: an anti-angiogenic composition wherein said composition is or is substantially similar to, a composition that elutes from an aqueous extract from blackberry fruit.

Group IV. Claims 108-135, drawn to a second method of use: a method of ameliorating or prevent angiogenesis and/or decreasing the size of an existing capillary network in a mammal comprising administering an effective amount of claims 105.

The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT 13.1, because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature of each method and/or composition is as follows:

The special technical feature of Group I is an anti-angiogenic composition wherein said composition is or is substantially similar to, a composition that elutes from an aqueous extract from pomegranate fruit and The special technical feature of Group II is a method of ameliorating or prevent angiogenesis and/or decreasing the size of an existing capillary network in a mammal comprising administering an effective amount of claim 73 and The special technical feature of Group III is an anti-angiogenic composition wherein said composition is or is substantially similar to, a composition that

elutes from an aqueous extract from blackberry fruit and The special technical feature of Group IV is a method of ameliorating or prevent angiogenesis and/or decreasing the size of an existing capillary network in a mammal comprising administering an effective amount of claim 105.

Thus, Groups I and III are unrelated compositions because each composition comprises of different active ingredients. For example, Group I's composition elutes from an aqueous extract from pomegranate fruit oppose to Group III's composition elutes from an aqueous extract from blackberry fruit.

Moreover, Groups II and IV are unrelated methods because each method comprise of different active steps and/or the utilization of different compounds to obtain their preamble objectives and thus do not share a special technical feature.

Furthermore, Groups I and III are an unrelated composition to Groups II and IV methods because the products as claimed can be used in a materially different process of using that product such as treating various diseases such as diabetic retinopathy or malignant tumor growth etc. and thus do not share a special technical feature.

For the reasons above, the inventions of Groups I-IV do not share a special technical feature.

In addition, this application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- A. The various distinct diseases instantly claimed (e.g. as recited in claims 79-83, 92-97, 109-114 and 123-128).
- B. The various distinct additional different compounds instantly claimed (e.g. as recited in claims 76, 106, 139 and 140).
- C. The various distinct additional compounds instantly claimed (e.g. as recited in claims 104, 121 and 135).

Applicant is required, in reply to this action, to elect a single species (i.e., elect a particular species from each of Groups A-C above) to which the claims shall be restricted if no generic claim is finally held to be allowable.

The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: claims 73, 77, 105 and 108

The species listed above relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The instantly claimed products of Groups I and III are of different active ingredients which requires a different search for each product and the instantly claimed methods of Groups II and IV are of different active steps to obtain its claimed preamble objective which requires a different search for each method.

Applicant is advised that the reply to this requirement to be completed must include an election of the invention to be examined even though the requirements be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1655

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RW

/Christopher R. Tate/  
Primary Examiner, Art Unit 1655